

**BRIGHAM CITY APPEAL AUTHORITY
FEBRUARY 14, 2007 – MEETING MINUTES**

PRESENT: Martha Shoun Vice Chairman
Don Peart Board Member
Marilyn Peterson Board Member
Jess Palmer Alternate
Jaye Poelman Alternate

ALSO PRESENT: Jeff Leishman Associate Planner

EXCUSED: George Berkley Chairman

AGENDA:

1. Approval of the January 10, 2007 Meeting Minutes
2. Application #606 / Expansion of Nonconforming Use / 318 North Highland / Don Cool
3. Review Updated Appeal Authority Bylaws

Meeting convened at 5:30 P.M.

Approval of Agenda:

Motion:

Approval of Minutes:

Motion:

Application #606 – Expansion of Nonconforming Use / 318 North Highland / Don Cool

Mr. Cool has applied for a City business license identified as Cool Landscaping. The residence, located in an R-1-10 Zoning District, will be used for the book keeping portion of the business. The property located east of the home, 14.5 acres, is located in an MU-160 Zoning District. It is intended as the storage area for the equipment noted in the letter of intent. Storage of this equipment is identified as a nonconforming use.

Martha Shoun asked Mr. Cool if he wanted to go ahead with his application or wait until there was a full board to hear it. Mr. Cool indicated that he wanted to continue.

Jeff Leishman asked to be allowed to make comment under which the standard would be set to look at this application. The applicant and the Appeal Authority have been given the references under which this will be looked at. Mr. Cool lives in a home on Highland Boulevard. In back of that home, he owns a little over 14-acres. The MU-160 Zone requires every lot to have 160-acres. Mr. Cool's 14-acre parcel is nonconforming because it does not conform to the standards. The City has given the Appeal Authority all of the code references that are relevant; Title 29.04 sets the basis for the beginning of this discussion. Mr. Leishman read that section as follows:

C. Nonconforming Use of Land. Except as otherwise provided by law, including statutory and case law, nonconforming use of land lawfully existing on the effective date of the ordinance rendering it nonconforming may be continued and maintained provided such nonconforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the

nonconforming use is discontinued for a continuous period of more than one year, it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located, except for single-family dwellings.

F. Alternations or Modifications to Nonconforming Use. A use which has been declared nonconforming shall not be enlarged or moved except as provided in Section 29.02.040 of this Title.

Also Title 29.20 Home Occupations as follows:

29.20.010. Purpose and Intent.

It is the purpose and intent of this chapter to allow persons residing in dwellings to use their mental or physical expertise and talent in providing a service, developing a product for sale to the public, operating certain kinds of small businesses or maintaining a professional or business office work space in the dwelling, or in an attached or detached garage or accessory building, or yard space, while at the same time maintaining the peace, quiet and domestic tranquility within all residential areas of Brigham City, guaranteeing to all residents freedom from excessive noise, traffic, nuisances, hazards, and other possible adverse effects of limited business activities being conducted in such areas, and improving and maintaining the aesthetic quality of the neighborhood and the lot or parcel upon which the dwelling and home occupation are located. It is further the purpose and intent of this chapter that home occupations shall be clearly accessory and subordinate to the principal use of the property for dwelling purposes.¹

The Staff has made some observations. Mr. Cool has equipment in the back of his home, in the MU-160 Zone, which has been used for agriculture purposes. He wants to take that equipment and use it in the landscaping business. Typically, he will be doing things like landscaping, removal of driveways or sidewalks. He is not looking to get into anything on a large scale.

Mr. Cool stated that he has used the equipment for his livestock and taking care of his property. He has been approached by several neighbors to do small jobs for them. He decided to apply for a business license and would not add any more equipment than what he already has. He is not planning to do a full-blown construction crew with track hoes. He currently has a small skid-loader, backhoe and trailer. He is thinking about getting a three-yard dump truck or something with a dump box to haul concrete in.

Mr. Leishman stated that it appears to the City that the equipment used for the landscaping business is one-and-the-same as the equipment used for the agriculture which is being conducted on-site. No additional equipment shall be stored on-site that is not similar in nature to the equipment being used in the farming operation. This is to ensure that there will be no disruption to the neighborhood than is currently being experienced. In the findings of fact, such use will not under the circumstances of the particular case be detrimental to the health, safety and general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity. With all this, the City is trying to achieve the spirit of the home occupation provisions.

Martha Shoun asked if it would be possible, as part of the motion, to put a specific limitation on the approval, such as no heavy equipment, so there will be no question in anyone's mind as to what approval was made. Mr. Leishman agreed with Ms. Shoun and stated that it should be very specific and itemize what equipment is there. The understanding is that if the business grows and flourishes, with a need for expansion of employees or equipment, than the approval will either have to be modified or a new location will need to be found that is more compatible with the storage of large equipment.

113 There is one frontage entrance on Mr. Cool's property which is large enough for a trailer or
114 backhoe. He will take the equipment from his property onto the boulevard. Mr. Cool plans to do
115 the work in the afternoon or evening time and on Saturdays. The equipment he has now is
116 enough for the little jobs people come and ask him to do for them. He has a haul and skid loader
117 and a 24-foot flat trailer. The only thing he does not have is a vehicle to pull the trailer with. He
118 has thought about getting a small dump truck about the size the City uses to plow their streets.
119 Mr. Cool said this is something they are going to try for a couple of years and if it doesn't pay to do
120 what they are doing then he probably will not renew the license. If it is something that could
121 expand then they will work with that when the time comes.

122
123 It was asked if there are any specific rules or laws in regards to travel on the streets as far as
124 backhoes and such are concerned. Mr. Leishman replied that there is the Utah traffic code which
125 requires warning lights. Mr. Cool said that even his skid loader has warning lights on it but it is
126 small enough that he can put it in the back of his truck. Mr. Leishman said that tracking onto the
127 street and noise is something that should not happen. Mr. Cool will need to be a good neighbor
128 and not be disruptive to the neighborhood.

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130 Mr. Cool is not interested in doing large jobs that would require a contractor license. If he stays
131 on private property and only does small jobs he will not have to worry about that. In essence, he
132 will be a handyman.

133
134 In the State Code, landscaping is a regulated profession. The handyman provisions of the State
135 Code state that a handyman is defined as; all work including labor, materials and profit be less
136 than \$1,000 per job. These are jobs that large contractors typically do not want to bother with.
137 Mr. Cool stated that he had thought of naming the business Cool Handyman Service and putting
138 it in more of a handyman category.

139
140 It was asked what the expansion is and what about Mr. Cool's lot has been approved for
141 nonconformance in the past. Mr. Leishman replied, as an example, ~~that~~ a land use category is
142 classified as a mine, quarry, gravel pit, rock crusher, concrete batching plant, asphalt plant, oil
143 wells and steam wells. Parson's is a nonconforming category because they do not have 160-acres
144 either. The basis, in this instance, is the lot area of the agricultural\farmling operation. ~~so~~ The
145 expansion is to take the equipment that performs that operation, some where else, to use that
146 equipment in another type of business.

147
148 Charles Jones came forward. He stated that he is a nonresident property owner to the north of
149 Mr. Cool's property. He stated that he had no problems with anything that he had heard. He said
150 he enjoyed the forum.

151
152 Mr. Leishman stated that he had given the Appeal Authority members some stipulations and
153 findings they should make and from the evenings discussion there should be very specific
154 conditions made to this application, if approved.

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156 **MOTION:** A motion was made by Martha Shoun to approve the expansion of the
157 nonconforming use to allow the agricultural equipment to be used for business
158 purposes. The equipment stored onsite, which is the same equipment used for
159 the farm operation, there can be no additional equipment stored on that site that
160 is not similar in nature to the equipment being used in the farming operation.
161 Such use of this particular nonconforming property cannot be detrimental to the
162 health, safety or general welfare of persons residing or working in the vicinity or
163 injurious to the property or improvements in the vicinity; such use is in
164 compliance with the spirit and intent of the expansion provisions of the
165 nonconforming provisions of the Code. The equipment which can be stored and
166 utilized is a backhoe, a 24-foot trailer, a skid loader and the acquisition of a small
167 dump truck. The motion was seconded by Don Peart and passed unanimously.

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169 The approval of the expansion of a nonconforming use has been approved.

170 Mr. Leishman commented that the minutes from the previous meeting and the update to the
171 Appeal Authority Bylaws were not prepared for review at the time of this meeting. Those items
172 will be addressed at a future meeting.

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174 **MOTION:** A motion was made by Jess Palmer to adjourn. The motion was
175 seconded by Jaye Poelman and passed unanimously.

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177 The meeting adjourned at 6:07 p.m.
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181 This certifies that the minutes of February 14, 2007 are a true and correct copy as
182 approved by the Appeal Authority on March 14, 2007.

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184 Signed: _____
185 Jeffery R Leishman - Secretary